

BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

CARL RANDOLPH CASSIDY
CPA Certificate No. 54698

Respondent

Case No. AC-2009-30
OAH No. 2010041051

ORDER DENYING RECONSIDERATION

On November 2, 2010, Administrative Law Judge Jankhana Desai, State of California Office of Administrative Hearings, heard this matter in Laguna Hills, California. Carl Sonne, Deputy Attorney General, represented complainant Patti Bowers, Executive Officer of the California Board of Accountancy (CBA). Respondent represented himself.

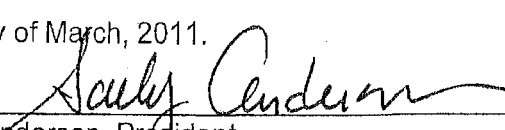
The matter was submitted on November 2, 2010. Administrative Law Judge Jankhana Desai issued his Proposed Decision on December 2, 2010. The California Board of Accountancy adopted the Proposed Decision and issued its Decision and Order on February 4, 2011, with an effective date of March 4, 2011.

On March 4, 2011, Carl Randolph Cassidy, filed a Petition for Reconsideration of the Decision and Order. On March 4, 2011, the CBA issued an Order of Stay of Execution of Decision until March 14, 2011, in order to permit the CBA to decide whether to order reconsideration.

ORDER

The CBA hereby issues this Order denying the Petition for Reconsideration, and the Decision and Order of the CBA issued on February 4, 2011, is imposed, effective March 14, 2011.

IT IS SO ORDERED this 15th day of March, 2011.


Sally Anderson, President
For The CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
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STATE OF CALIFORNIA

In the Matter of the Accusation Against:

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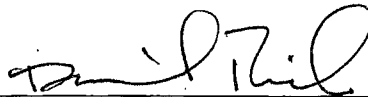
Case No. AC-2009-30

OAH No. 2010041051

ORDER OF STAY OF EXECUTION OF DECISION

Pursuant to Section 11521 of the Government Code, the Decision adopted by the California Board of Accountancy in the above-entitled matter is hereby stayed for ten (10) days until March 14, 2011, in order to permit the Board to decide whether to order a reconsideration.

IT IS SO ORDERED this 7th day of March, 2011.



Dan Rich, Assistant Executive Officer
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

**CALIFORNIA BOARD OF ACCOUNTANCY**

2000 EVERGREEN STREET, SUITE 250
SACRAMENTO, CA 95815-3832
TELEPHONE: (916) 263-3680
FACSIMILE: (916) 263-3675
WEB ADDRESS: <http://www.dca.ca.gov/cba>

**DECLARATION OF SERVICE BY MAIL**

I declare I am employed in the county of Sacramento, California. I am over 18 years of age and not a party to the within entitled cause; my business address is 2000 Evergreen Street, Suite 250, Sacramento, California 95815-3832. I am familiar with the business practice of the CBA for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the CBA is deposited with the United States Postal Service that same day in the ordinary course of business.

On March 15, 2011, I served the enclosed Order Denying Reconsideration of Decision of the CBA by placing true copies enclosed in sealed envelopes, with postage fully prepaid for regular mail, and with postage and certification fees fully prepaid with return receipt requested for the certified mail, in the United States mail at Sacramento, California addressed as follows:

NAMES AND ADDRESSCERTIFIED NO.

**CARL RANDOLPH CASSIDY
2070 BUSINESS CENTER DR., #100
IRVINE, CA 92612**

70098 0080 0000 7253 5703

NAMES AND ADDRESSFIRST-CLASS MAIL

**CARL RANDOLPH CASSIDY
2070 BUSINESS CENTER DR., # 100
IRVINE, CA 92612**

I declare, under penalty of perjury, the foregoing is true and correct and that this declaration was executed on March 15, 2011, by Elizabeth Anne Nunally at Sacramento, California.

Elizabeth Anne Nunally, Enforcement Technician
Declarant

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

CARL R. CASSIDY
2070 Business Center Dr. #100
Irvine, CA 92612
Certified Public Accountant License No. 54698

Respondent.

Case No.: AC-2009-30

OAH No.: 2010041051

DECISION AND ORDER

The attached Proposed Decision and Disciplinary Order is hereby adopted by the California Board of Accountancy of the Department of Consumer Affairs, as its Decision in the above-entitled matter.

This Decision shall become effective on March 4, 2011
It is so ORDERED on February 4, 2011



For The CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

CARL RANDOLPH CASSIDY,

Certified Public Accountant License No.
CPA 54698

Respondent.

Case No. AC 2009 30

OAH No. 2010041051

PROPOSED DECISION

Administrative Law Judge Jankhana Desai, Office of Administrative Hearings, State of California, heard this matter on November 2, 2010, in Laguna Hills, California.

Carl Sonne, Deputy Attorney General, represented Patti Bowers (Complainant), Executive Officer, California Board of Accountancy (Board), Department of Consumer Affairs, State of California.

Carl Randolph Cassidy (Respondent) was present at hearing and represented himself.

Oral and documentary evidence was presented and argument heard. The record was closed and the matter submitted on November 2, 2010.

FACTUAL FINDINGS

1. On September 8, 2010, Complainant made the First Amended Accusation solely in her official capacity. The First Amended Accusation pled eight causes for discipline.

License History

2. On February 2, 1990, the Board issued Certified Public Accountant License No. CPA 54698 to Respondent. Respondent's license has been valid during the following periods: February 2, 1990 to July 31, 1991; February 28, 1994 to July 31, 1997; August 28, 1997 to July 31, 2001; July 24, 2002 to July 31, 2003; September 12, 2003 to July 31, 2005; September 12, 2005 to July 31, 2007; January 31, 2008 to July 31, 2009. Respondent's Certified Public

Accountant (CPA) License expired on July 31, 2009, and has not been renewed. The Board retains jurisdiction to proceed in this matter pursuant to Business and Professions Code section 118, subdivision (b).

3. Respondent previously held CPA License No. CPA 31334, issued by the Board on January 30, 1981. That license expired on July 31, 1983, and was ultimately cancelled on August 1, 1988, for failure to renew the license within five years.

The Board's Investigation

4. On March 7, 2008, the Board commenced an investigation of Respondent to review his compliance with continuing education requirements and to obtain a description of his practice activities while his license was delinquent. Respondent's license had expired on July 31, 2007, and was renewed active on January 31, 2008, six months late. Most recently, Respondent's license expired on July 31, 2009, and remains expired from that date. Respondent should not have been practicing public accountancy during these periods. The Board investigated Respondent's practice activities during these two periods. The Board also investigated whether Respondent held himself out to be a CPA while his license was delinquent. A series of correspondences occurred between the Board and Respondent as a result of the investigation. At times, Respondent was not forthright in his replies to the Board, often being circuitous and somewhat sarcastic.

Respondent's Responses on License Renewal Forms

5. Respondent completed a "DELINQUENT RENEWAL FORM" for the renewal of his license following the July 31, 2007, expiration. Question 9 of the form states: "Are you currently practicing public accountancy?" Two boxes, one designated "Yes" and one designated "No," were provided to respond to Question 9. Respondent marked the box designating "Yes" as his answer.

6. Respondent completed a "RENEWAL FORM" for the renewal of his license that expired July 31, 2009, which he admitted to submitting after July 31, 2009. Question 9 of the form states: "Are you currently practicing public accountancy?" Two boxes, one designated "Yes" and one designated "No," were provided to respond to Question 9. Respondent marked the box designating "Yes" as his answer. The evidence did not establish whether this form was sent by Respondent and/or received by the Board.

Continuing Education Requirements

7. During the entire period of the investigation, Respondent did not produce a certificate of completion for a Professional Conduct and Ethics (PC&E) course that was due with his July 31, 2007, renewal. He submitted a copy of the exam that he took in order to satisfy the PC&E course requirement; however, this did not satisfy the requirement of submitting a certificate of completion. Respondent's license had expired on July 31, 2007. In order to renew his license, Respondent completed a Delinquent Renewal Form in which he indicated that he had completed a course titled, "Prof. Conduct & Ethics Home Study,"

approval number 0195-01-9911, on September 6, 2005. Respondent listed Art Berkowitz Seminars as the course provider. Art Berkowitz (Berkowitz), testified at hearing. Berkowitz could not locate any records documenting Respondent's completion of the PC&E course. Spidell Publishing (Spidell) sells the course to Berkowitz. Lisa Mackey, a representative of Spidell, wrote an e-mail dated October 28, 2010, confirming that Respondent completed the aforementioned course on September 8, 2003, and received a certificate of completion for the course. A copy of that certificate was provided. Berkowitz testified that he has been working with Spidell for 15 years and has no reason to disbelieve Spidell's representation. Respondent was required to complete a PC&E course and fulfilled this requirement.

Diehl & Company, Inc.

8a. Respondent was employed by Diehl & Company, Inc. (Diehl) from approximately June 2006 through the end of 2007. Respondent's license was invalid from August 1, 2007, to January 31, 2008. In a letter to the Board in response to the Board's March 7, 2008, inquiry, Respondent informed the Board that he was an employee of Diehl and that for the period, August 10, 2007, to February 10, 2008, Respondent "was not involved in the practice of public accounting (attest services) as an employee or outside (his) employment." In an e-mail dated April 29, 2008, Respondent wrote to the Board that he "provided tax preparation and bookkeeping services to Diehl & Company, Inc. clients during the period August 1, 2007 through February 10, 2008." In an email dated June 24, 2008, Respondent wrote to the Board that during his employment with Diehl, he "was not involved in the practice of public accounting (attest services) as an employee or outside (his) employment."

8b. Diehl's president, John Diehl, testified at hearing. He believed that Respondent possessed a valid CPA license during the entire period that Respondent worked for him. As an employee of Diehl, Respondent prepared tax returns during the period August 1, 2007, to January 31, 2008. Respondent signed electronically or manually as the preparer for the tax returns.

Individual Tax Returns of the Fabians

8c. Respondent prepared the 2006 U.S. Individual Income Tax Return for taxpayers by the name of Fabians¹. He signed and dated the IRS e-file Signature Authorization form, September 17, 2007. Respondent included the designation, "CPA" after his signature. He prepared the 2006 U.S. Individual Income Tax Return, dated it October 1, 2007, and put his name, followed by the designation "CPA" in the box designated "Preparer's signature." He also included the number, P00286699, which is Respondent's Preparer Tax Identification Number (PTIN).

Respondent prepared the 2006 California Resident Income Tax Return for the Fabians, dated it October 1, 2007, and put his name, followed by the designation "CPA" in the box designated "Paid preparer's signature." He also included his PTIN.

¹ The first names of taxpayers have been omitted.

Respondent signed and dated Fabians' Nebraska Individual Income Tax Declaration for Electronic Filing" form, September 17, 2007.

Tax Returns of C & F Maintenance & Prop Mgmt

8d. Respondent prepared the 2006 Nebraska Corporation Income Tax Return for C & F Maintenance & Prop Mgmt, and put his name followed by the designation "CPA" in the area designated for "Signature of Preparer Other than Taxpayer." This form is not dated.

8e. Respondent prepared the 2006 U.S. Corporation Income Tax Return for C & F Maintenance & Prop Mgmt. He signed and dated the IRS e-file Signature Authorization form, September 14, 2007. Respondent included the designation, "CPA" after his signature. He prepared the 2006 U.S. Corporate Income Tax Return and put his name, followed by the designation "CPA" in the box designated "Preparer's signature." He also included his PTIN. This form is not dated.

Individual Federal Income Tax Return of Chapman

8f. Respondent prepared the 2006 U.S. Individual Income Tax Return for a taxpayer by the name of Chapman. He signed and dated an IRS e-file Signature Authorization form, October 5, 2007. Respondent included the designation, "CPA" after his signature. He prepared the 2006 U.S. Individual Income Tax Return and put his name in the box designated "Preparer's signature." He also included his PTIN. This form is not dated.

8g. Respondent signed and dated a 2006 California e-file Signature Authorization for Individuals form, October 5, 2007, for Chapman. Respondent included the designation, "CPA" after his signature. Respondent prepared the 2006 California Resident Income Tax Return, and put his name, followed by the designation "CPA" in the box designated "Paid preparer's signature." He also included his PTIN. This form is not dated.

9. Factual Findings 8a through 8g demonstrate that Respondent held himself out as a CPA and practiced public accountancy during the period his license was delinquent, from August 1, 2007, through January 31, 2008.

10. At hearing, Respondent did not deny that conduct in Factual Findings 8a through 8g. Rather, he testified that he believed that he was not holding himself out as a CPA and further asserted that the "mere filing" of e-file authorizations did not amount to the practice of public accounting. Respondent's assertions are not persuasive. Respondent prepared multiple tax forms, above and beyond e-file signature authorizations, as set forth in Factual Findings 8a through 8g. On all of the tax forms in 8a through 8g, Respondent included the designation CPA, even on the handwritten portions.

All In One Trading, Inc.

11a. All in One Trading, Inc. (AIOT) engaged Respondent to prepare AIOT's 2008 federal and state corporate income tax returns.

11b. In an engagement letter dated December 2, 2008, from Respondent to AIOT, Respondent signed and printed his name, followed by the designation "CPA." Underneath Respondent's name, the words "Cassidy & Burton CPAs" are written, as is a website address, "www.cassidyburtoncpas.com." This firm name was not registered with the Board.² At the end of two e-mails written by Respondent to AIOT, in March and April 2010, Respondent wrote his name followed by the designation "CPA," as part of his electronic signature. Respondent's invoice dated February 18, 2010, to AIOT was on his letterhead. Below his name, the words "CERTIFIED PUBLIC ACCOUNTANT" appear. Respondent admitted to using the electronic signature block and to the letterhead. In an email dated April 1, 2010, Respondent wrote to AIOT in part: "...to the AIOT corporate federal income tax return which we filed from your offices on 2-18-10."

11c. Respondent prepared AIOT's 2008 U.S. Corporation Income Tax Return, dated it February 18, 2010, and put his name, followed by the designation "CPA" in the box designated "Preparer's signature." He also included his PTIN. In the box designated "Firm's name (or yours if self-employed)," Respondent wrote "CASSIDY AND BURTON, CPAS," along with an address. The 2008 U.S. Corporation Income Tax Return has a question that states, "May the IRS discuss this return with the preparer shown below (see instructions)?" Two boxes, one designated "Yes" and one designated "No," were provided to respond to this question. The box designating "Yes" is marked.

11d. Nancy Tran, AIOT's accounting manager, testified that Respondent informed AIOT that he had electronically filed (e-filed) AIOT's 2008 U.S. Corporation Income Tax Return on February 18, 2010; however, the tax return was never successfully e-filed with the IRS. Respondent provided an invoice dated February 18, 2010, to AOIT, which AIOT paid in full. Respondent's last time on the premises of AIOT was February 18, 2010, and the software that Respondent utilized in preparation of the tax return was installed on a computer on the premises of AIOT. Upon learning that the tax return was not filed, AIOT contacted Respondent and attempted to resolve the matter with Respondent, but found Respondent to be uncooperative.

11e. On May 3, 2010, AIOT submitted a consumer complaint to the Board regarding Respondent's unsuccessful filing of the 2008 federal income tax return and Respondent's lack of cooperation.

11f. The Board wrote a letter to Respondent, dated May 18, 2010, asking Respondent to cease and desist from the practice of public accountancy since his license

² Respondent submitted an application to the Board for accountancy corporation licensure under the name Cassidy & Burton CPA's Inc.; however, it appears the Board notified Respondent that the application was incomplete.

expired as of August 1, 2009. In the May 18, 2010 letter, the Board also requested Respondent to provide a written response to the allegations that he failed to e-file AIOT's tax return and that he has not responded to AIOT or taken steps to rectify the matter. Respondent never provided a written response.

12. Respondent provided a letter of reference from Steven Burton (Burton) dated November 1, 2010. Burton began working with Respondent shortly after Respondent left Diehl. Later, the two formed a working partnership, Cassidy & Burton, CPAs Inc. Burton attested to Respondent being a professional with a great deal of integrity. Burton also took responsibility for the creation of the Cassidy & Burton website, which contained Respondent's profile as indicated in Factual Finding 15b. Burton also wrote of AIOT. Nowhere in the letter did Burton indicate that Burton performed any of the work for AIOT. In fact, Burton wrote of Respondent's work for AIOT.

13. Factual Findings 11a through 11f, and 12, demonstrate that Respondent was in the practice of public accountancy and using the CPA designation in 2010, when his license was expired.

Other Witness Testimony

14. Kathy Tejeda (Tejeda), Enforcement Manager with the Board, commenced the investigation. She concluded that, when Respondent's license was in delinquent status, he: (1) prepared three tax returns and (2) held himself out to the public as a CPA. At hearing, Tejeda confirmed that the certificate of completion of the PC&E course described in Factual Finding 7 would have satisfied the continuing education requirement.

15a. Jesus Silva Jr. (Silva), Enforcement Analyst with the Board, also investigated Respondent's case. Silva authored the May 18, 2008, cease and desist letter. Silva visited Respondent's address of record as late as November 1, 2010, and saw a suite sign that said "JACK L. GAAR, CPA." Underneath this name, it read "CARL R. CASSIDY, CPA." Gaar wrote an e-mail on behalf of the Respondent claiming that Respondent has not been a subtenant of his since early 2006. He also claimed that he has unsuccessfully tried to have the sign changed several times. Gaar also wrote that Respondent's name is not on the building directory. Respondent testified that he does not have an office at the location, but does receive his mail there. He also testified that he did not order the suite sign.

15b. On July 9, 2010, Silva conducted an Internet search and discovered Respondent's name and picture on the Cassidy and Burton, CPAs, website. Respondent was listed as a partner, with the designation, "CPA."

15c. As a result of the investigation, Silva concluded: (1) Respondent prepared AIOT's tax return after his license had expired, (2) From at least December 2, 2008, Respondent had been using an unregistered firm name, Cassidy & Burton, CPAs, (3) Respondent was advertising accounting services on the website of Cassidy & Burton, CPAs, which also listed Respondent as a CPA and (4) Respondent had not responded to Board inquiries and had ignored telephonic requests.

Costs

16. Respondent is employed part time as a controller for RHS Carpet Mill, Inc. This position does not require a CPA license. He also works as an accounting teacher at Westwood College. He is single and has two children, a 27-year-old son and a 24-year-old daughter. His two children are financially independent. Respondent lives with a roommate. Respondent claimed he could not pay the Board's costs, however, he did not show an inability to pay. Respondent is earning \$5,000 per month and pays \$1,100 per month in rent. When previously given an opportunity to submit documents showing financial hardship to the Board, Respondent did not provide such documents.

17. The Board incurred \$18,669.03 as its costs of investigation and prosecution. The costs are broken down as follows:

- Board's investigative costs: **\$7,499.53**
- Attorney General's prosecution costs: **\$11,169.50**

These costs, established by Certification of Prosecution Costs and Declaration by Carl W. Sonne, and Certification of Costs of Investigation and Prosecution, are deemed reasonable pursuant to Business and Professions Code section 5107, but are not granted in full as explained in Legal Conclusion 10.

LEGAL CONCLUSIONS

1. Cause exists to suspend or revoke Respondent's CPA license pursuant to Business and Professions Code section 5100 subdivision (g), in conjunction with sections 5050, 5051 and 5055, for unprofessional conduct, in that on or about September 14, 2007, September 17, 2007, October 5, 2007, and February 18, 2010, Respondent willfully practiced and held himself out as a Certified Public Accountant when he failed to have a valid license, by reason of Factual Findings 8a through 8g, 9, 10, 11a through 11c, and 12 through 14.

2. Cause does not exist to suspend or revoke Respondent's CPA license pursuant to Business and Professions Code section 5100 subdivision (g), in conjunction with California Code of Regulations (CCR), title 16, sections 89, subdivision (b), and 87.7, subdivision (a), for unprofessional conduct, in that Respondent did not willfully misrepresent the completion of continuing education requirements to the Board, by reason of Factual Finding 7.

3. Cause does not exist to suspend or revoke Respondent's CPA license pursuant to Business and Professions Code section 498 and 5100, subdivision (b), in that on Respondent's July 31, 2007. license renewal, Respondent did not secure his CPA license by fraud and/or deceit and did not knowingly misrepresent a material fact, by reason of Factual Finding 7.

4. Cause exists to suspend or revoke Respondent's CPA license pursuant to Business and Professions Code section 5100, subdivision (g), in conjunction with California Code of Regulations, title 16, section 52, subdivision (d), for unprofessional conduct, in that Respondent knowingly and willfully submitted untrue statements to the Board, by reason of Factual Finding 8a and Legal Conclusion 1.

5. Cause exists to suspend or revoke Respondent's CPA license pursuant to Business and Professions Code section 5100, subdivision (g), in conjunction with section 5060, for unprofessional conduct, in that from at least December 2, 2008, and thereafter, Respondent knowingly and willfully practiced under the name of Cassidy and Burton, CPAs, which name was not registered with the Board, by reason of Factual Findings 11b, 11c, 12, and 15.

6. Cause exists to suspend or revoke Respondent's CPA license pursuant to Business and Professions Code section 5100, subdivision (c), for unprofessional conduct, in that from at least September 14, 2007, Respondent engaged in acts constituting dishonesty, fraud, gross negligence, or repeated negligent acts by misrepresenting his status as a CPA to client(s) and misrepresenting to AIOT that its 2008 federal tax return had been filed, by reason of Factual Findings 11b through 11d.

7. Cause exists to suspend or revoke Respondent's CPA license pursuant to Business and Professions Code section 5100, subdivision (g), in conjunction with California Code of Regulations, title 16, section 52, subdivision (a), for unprofessional conduct, in that Respondent knowingly and willfully failed to respond to inquiries by the Board, by reason of Factual Findings 11f and 15c.

8. Cause exists to suspend or revoke Respondent's CPA license pursuant to Business and Professions Code section 5100, subdivision (g), in conjunction with California Code of Regulations, title 16, section 63, for unprofessional conduct, in that Respondent advertised or used others forms of solicitation which were false, fraudulent, misleading, or in violation of Business and Professions Code section 17500, by using and advertising the unregistered name of "Cassidy & Burton, CPAs" and holding himself out as a certified public accountant, by reason of Factual Findings 15b and 15c.

9. Based on the foregoing Factual Findings, the accompanying order is warranted to protect the public welfare and interest.

Costs

10. The Board is entitled to recover its reasonable costs of investigation and prosecution of this matter pursuant to Business and Professions Code section 5107. The amount of \$18,669.03 is reasonable, based on Factual Finding 17. However, it is not reasonable to require Respondent to pay the entire amount. Eight separate causes for discipline were alleged in the Accusation. At hearing, the underlying facts were not established that support the second and third causes for discipline. Accordingly, it would be appropriate to require Respondent to pay 75 percent of the costs incurred by the Board, the

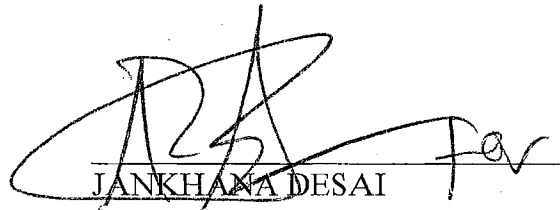
sum of which is \$14,001.77 (See, *Zuckerman v. State Board of Chiropractic Examiners*, (2002) 29 Cal.App.4th 32.)

ORDER

1. Certified Public Accountant License number 54698, issued to Respondent Carl Randolph Cassidy, is hereby revoked.

2. Respondent shall reimburse the Board \$14,001.77 for its investigation and prosecution costs. The Board may establish a payment plan which is reasonable for Respondent.

DATED: December 2, 2010


JANKHANA DESAI
Administrative Law Judge
Office of Administrative Hearings

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10 **BEFORE THE**
11 **CALIFORNIA BOARD OF ACCOUNTANCY**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. AC 2009 30

14 **CARL RANDOLPH CASSIDY**
2070 Business Center Dr. #100
15 Irvine, CA 92612

**FIRST AMENDED
ACCUSATION**

16 Certified Public Accountant License No. CPA 54698

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Patti Bowers (Complainant) brings this First Amended Accusation solely in her
22 official capacity as the Executive Officer of the California Board of Accountancy, Department of
23 Consumer Affairs.

24 2. On or about February 2, 1990, the California Board of Accountancy (CBA) issued
25 Certified Public Accountant License No. CPA 54698 to Carl Randolph Cassidy (Respondent).
26 The Certified Public Accountant License expired on July 31, 2009, and has not been renewed.
27 The validity of Respondent's license fluctuated from its date of issuance as follows:

28 ///

Dates of Valid License	Dates of Invalid License	Unpaid Fees	No Cont. Ed.
2/2/1990 to 7/31/1991	8/1/1991 to 2/27/1994	X	X
2/28/1994 to 7/31/1995			
8/1/1995 to 7/31/1997	8/1/1997 to 8/27/1997	X	X
8/28/1997 to 7/31/1999			
8/1/1999 to 7/31/2001	8/1/2001 to 7/23/2002	X	X
7/24/2002 to 7/31/2003	8/1/2003 to 9/11/2003	X	X
9/12/2003 to 7/31/2005	8/1/2005 to 9/11/2005	X	X
9/12/2005 to 7/31/2007	8/1/2007 to 1/30/2008	X	X
1/31/2008 to 7/31/2009	8/1/2009 to current	X	X

JURISDICTION

3. This Accusation is brought before the CBA, Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 118, subdivision (b), provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the CBA of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

1 5. Section 498 states:

2 A board may revoke, suspend, or otherwise restrict a license on the ground that
3 the licensee secured the license by fraud, deceit, or knowing misrepresentation of a
4 material fact or by knowingly omitting to state a material fact.

5 6. Section 5050, subdivision (a), states:

6 Except as provided in subdivision (b) and (c) of this section, in subdivision (a)
7 of Section 5054, and in Section 5096.12, no person shall engage in the practice of
8 public accountancy in this state unless the person is the holder of a valid permit to
9 practice public accountancy issued by the board or a holder of a practice privilege
10 pursuant to Article 5.1 (commencing with Section 5096.)

11 7. Section 5051 states:

12 Except as provided in Sections 5052 and 5053, a person shall be deemed to be
13 engaged in the practice of public accountancy within the meaning and intent of
14 [Chapter 1 of Division 3 (commencing with Section 5000)] if he or she does any of
15 the following:

16 (a) Holds himself or herself out to the public in any manner as one skilled in
17 the knowledge, science, and practice of accounting, and as qualified and ready to
18 render professional service therein as a public accountant for compensation.

19 (b) Maintains an office for the transaction of business as a public accountant.

20 (c) Offers to prospective clients to perform for compensation, or who does
21 perform on behalf of clients for compensation, professional services that involve or
22 require an audit, examination, verification, investigation, certification, presentation,
23 or review of financial transactions and accounting records.

24 (d) Prepares or certifies for clients reports on audits or examinations of books
25 or records of account, balance sheets, and other financial, accounting and related
26 schedules, exhibits, statements, or reports that are to be used for publication, for the
27 purpose of obtaining credit, for filing with a court of law or with any governmental
28 agency, or for any other purpose.

 (e) In general or as an incident to that work, renders professional services to
clients for compensation in any or all matters relating to accounting procedure and to
the recording, presentation, or certification of financial information or data.

 (f) Keeps books, makes trial balances, or prepares statements, makes audits,
or prepares reports, all as a part of bookkeeping operations for clients.

 (g) Prepares or signs, as the tax preparer, tax returns for clients.

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1 (h) Prepares personal financial or investment plans or provides to clients products
2 or services of others in implementation of personal financial or investment plans.

3 (i) Provides management consulting services to clients.

4 The activities set forth in subdivisions (f) to (i), inclusive, are "public
5 accountancy" only when performed by a certified public accountant or public
6 accountant, as defined in this chapter.

7 A person is not engaged in the practice of public accountancy if the only
8 services he or she engages in are those defined by subdivisions (f) to (i), inclusive,
9 and he or she does not hold himself or herself out, solicit, or advertise for clients
10 using the certified public accountant or public accountant designation. A person is
11 not holding himself or herself out, soliciting, or advertising for clients within the
12 meaning of this section solely by reason of displaying a CPA or PA certificate in his
13 or her office or identifying himself or herself as a CPA or PA on other than signs,
14 advertisements, letterhead, business cards, publications directed to clients or potential
15 clients, or financial or tax documents of a client.

16 8. Section 5055 states:

17 Any person who has received from the board a certificate of certified public
18 accountant may, subject to Section 5051, be styled and known as a "certified public
19 accountant" and may also use the abbreviation "C.P.A." No other person, except a
20 firm registered under this chapter, shall assume or use that title, designation, or
21 abbreviation or any other title, designation, sign, card, or device tending to indicate
22 that the person using it is a certified public accountant.

23 9. Section 5060 states:

24 (a) No person or firm may practice public accountancy under
25 any name which is false or misleading.

26 (b) No person or firm may practice public accountancy under any
27 name other than the name under which the person or firm holds a valid
28 permit to practice issued by the board.

(c) Notwithstanding subdivision (b), a sole proprietor may
practice under a name other than the name set forth on his or her
permit to practice, provided the name is registered by the board, is
in good standing, and complies with the requirements of subdivision
(a).

(d) The board may adopt regulations to implement, interpret, and
make specific the provisions of this section including, but not
limited to, regulations designating particular forms of names as
being false or misleading.

10. Section 5070.5, subdivision (a), states:

A permit issued under [Chapter 1, commencing with section 5000.1] to a certified public accountant or a public accountant expires at 12 midnight on the last day of the month of the legal birthday of the licensee during the second year of a two-year term if not renewed.

To renew an unexpired permit, a permit holder shall, before the time at which the permit would otherwise expire, apply for renewal on a form prescribed by the board, pay the renewal fee prescribed by this chapter and give evidence satisfactory to the board that he or she has complied with the continuing education provisions of this chapter.

11. Section 5100 states, in pertinent part:

After notice and hearing the board may revoke, suspend, or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

• • • •

(b) A violation of Section 478, 498, or 499 dealing with false statements or omissions in the application for a license, in obtaining a certificate as a certified public accountant, in obtaining registration under this chapter, or in obtaining a permit to practice public accountancy under this chapter.

(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in the same or different engagements, for the same or different clients, or any combination of engagements or clients, each resulting in a violation of applicable professional standards that indicate a lack of competency in the practice of public accountancy or in the performance of the bookkeeping operations described in Section 5052.

• • • •

(g) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter. . . ."

REGULATORY PROVISIONS

12. California Code of Regulations, title 16, section 52, subdivision (a) and (d), states:

(a) A licensee shall respond to any inquiry by the Board or its appointed representatives within 30 days. The response shall include making available all files, working papers and other documents requested.

1
2 (d) A licensee shall provide true and accurate information and responses to
3 questions, subpoenas, interrogatories or other requests for information or documents
4 and not take any action to obstruct any Board inquiry, investigation, hearing or
5 proceeding.

6
7 13. California Code of Regulations, title 16, section 63 states:

8 A licensee shall not advertise or use other forms of solicitation in any manner
9 which is false, fraudulent, misleading, or in violation of Section 17500 of the
10 Business and Professions Code.

11 14. California Code of Regulations, title 16, section 87.7, subdivision (a), states:

12 In order to renew a license in an active status a licensee shall, within the six
13 years preceding the license expiration date, complete a continuing education course
14 on the provisions of the Accountancy Act and the Board of Accountancy Regulations,
15 application to current practice, and other rules of professional conduct. Such course
16 shall be approved by the Board prior to the licensee receiving continuing education
17 credit for the course and shall be a minimum of 8 hours.

18 15. California Code of Regulations, title 16, section 89, subdivision (b), states:

19 If credit is claimed for completing the eight hour professional conduct and
20 ethics course specified in Section 87.7, a licensee shall obtain and retain for six years
21 after renewal of his or her license, a certificate of completion or its equivalent
22 disclosing the following information:

23 (1) Name of licensee.

24 (2) Course title.

25 (3) Board-issued approval number for the professional conduct and ethics
26 course completed by the licensee.

27 (4) School, firm or organization providing the course.

28 (5) Date of completion.

COST RECOVERY

16. Section 5107, subdivision (a), states:

The executive officer of the board may request the administrative law judge, as
part of the proposed decision in a disciplinary proceeding, to direct any holder of a
permit or certificate found to have committed a violation or violations of this chapter

1 to pay to the board all reasonable costs of investigation and prosecution of the case, including, but
2 not limited to, attorneys' fees. The board shall not recover costs incurred at the administrative
hearing.

3 FACTUAL SUMMARY

4 17. Respondent's license expired on July 31, 2007, without renewal, as set forth in
5 paragraph 2, above. On or about January 31, 2008, the CBA received a completed Delinquent
6 Renewal Form with its requisite Continuing Education Worksheet from Respondent requesting
7 "Active" license status for his July 31, 2007 renewal.

8 a. On the renewal form, Respondent ambiguously answered "N/A" and "No" in
9 response to question 4, a requirement due for Respondent. Question 4 on the renewal form states:
10 "Did you complete a Board-approved, 8-hour Professional Conduct and Ethics (PC&E) course
11 during the two years preceding your license expiration date? If yes, also enter the PC&E course
12 information in PART C (No PC&E is required for an inactive renewal or when the PC&E is not
13 due.) See Board's website at www.dca.gov/cba for a complete listing of approved providers."

14 b. On the renewal form's continuing education worksheet for the PC&E course
15 question, Respondent advised the CBA that he completed the course titled "Prof. Conduct &
16 Ethics Homestudy," approval number 0195-01-9911, on September 6, 2005. Respondent listed
17 Art Berkowitz Seminars as the course provider.

18 c. On July 21, 2008, in reply to the CBA's request to confirm Respondent's completion
19 of the PC&E course on September 6, 2005, Art Berkowitz, provider of the PC&E course, advised
20 that he could not locate any records documenting Respondent's completion of the course for
21 years 2003, 2004, 2005 and 2006. Art Berkowitz advised that Respondent likely did not submit
22 the course for credit.

23 d. On or about January 31, 2008, based upon Respondent's assertions in the Delinquent
24 Renewal Form and its attached Continuing Education Worksheet, the CBA renewed
25 Respondent's license to active status.

26 e. On or about April 4, 2008, in reply to the CBA's request for continuing education
27 verification (audit), Respondent advised the CBA that for the period of August 10, 2007, to
28 February 10, 2008, he "was not involved in the practice of public accounting," and he attached

1 copies of his certificates for completed continuing education credits. Respondent failed to
2 provide a certificate of completion for the required PC&E course that he reported completed on
3 September 6, 2005.

4 f. On July 18, 2008, in reply to a further request for information from the CBA,
5 Respondent advised the CBA that "During the period August 1, 2007 through February 10, 2008
6 ... I [he] did not provide any services as a CPA or in any other capacity as an independent
7 contractor to anyone other than as an employee of Deihl."

8 g. On March 30, 2009, Respondent's employer, John W. Diehl of Diehl & Company,
9 Inc., replied to a CBA issued subpoena by returning three tax returns prepared by Respondent.
10 Respondent prepared tax returns for others as a paid preparer and executed the practitioner's
11 certification and authentication as "Carl R. Cassidy, CPA" on September 14, 2007, September 17,
12 2007, and October 5, 2007. Thus, Respondent performed certified public accounting services
13 when he failed to hold a valid license.

14 18. On May 3, 2010, the CBA received a complaint from Mr. P. alleging Respondent
15 failed to Efile AIOT's (Mr. P's business) 2008 federal corporate income tax return. The
16 engagement letter with AIOT, dated December 2, 2008, associated Respondent with the firm
17 Cassidy & Burton, Certified Public Accountants. The firm name Cassidy & Burton, CPAs was
18 not registered with the CBA at any time.

19 19. Respondent installed ATX tax preparation software onto AIOT's office computer,
20 which was licensed to Respondent. Respondent was responsible for all entries in ATX.

21 20. On February 18, 2010, Respondent submitted an invoice to AIOT from "Carl R.
22 Cassidy, Certified Public Accountant" for final billing for the preparation of the corporation
23 returns for fiscal year ending June 30, 2008, assisting with adjustment of Quickbooks accounts,
24 and assistance with accounting and management reporting for employee benefit plans.
25 Respondent purportedly completed the federal corporate tax return and purportedly Efiled the
26 return on February 18, 2010, at which time the balance of the invoice was paid. Mr. P. did not
27 hear from Respondent regarding IRS acceptance of the federal corporate return.

28 ///

21. In an electronic mail (e-mail) correspondence, dated April 1, 2010, from Respondent to AIOT, Respondent stated "...The reconciliation schedule ties with the company Quickbooks file (as the sole transactional record used for prep of tax returns) to the AIOT corporate federal income tax returns which **we** filed from your offices on 2-18-10 [emphasis added] ..." As set forth above, Respondent's CPA license was expired and Respondent has not had practice rights since August 1, 2009. Furthermore, Respondent did not file the federal tax return(s) as represented.

22. On July 9, 2010, an internet search on “Carl Cassidy, CPA” was performed and found the firm website of “Cassidy & Burton, CPAs.” Selecting the “Contact Us” link revealed the subscription to be expired; however, the “Partners Profile” link revealed an active page with Respondent advertising an unregistered firm and using the CPA designation.

23. On July 27, 2010, Respondent's partner, Steven Burton, was contacted by the CBA to inquire about the firm. Mr. Burton stated that he is operating as "Cassidy & Burton, CPAs," a partnership recently incorporated. Mr. Burton stated that the firm provided "Mainly tax services."

24. On May 18, 2010, the CBA's Enforcement Division sent Respondent an enforcement contact letter requesting a response to Mr. P's allegations, a copy of the Efiling record reflecting the filing and acceptance from the Internal Revenue Service, his intention to renew his license, copies of certificates of completion for continuing education (CE) from August 1, 2007 through the present, a description of his practice, copies of an individual and a corporate income tax return, and a copy of his highest level financial statement product. A response was due by June 18, 2010. On July 9, 2010, in a telephone call with a CBA investigator, Respondent stated he would respond to the enforcement contact letter. To date, Respondent has failed to respond to the letter, further CBA inquiries and telephonic requests.

FIRST CAUSE FOR DISCIPLINE

(Practice Without a Valid License)

25. Respondent is subject to disciplinary action under section 5100, subdivision (g), in conjunction with sections 5050, 5051 and 5055, for unprofessional conduct, in that on or about

1 September 14, 2007, September 17, 2007, October 5, 2007, and February 18, 2010, Respondent
2 willfully practiced and held himself out as a Certified Public Accountant when he failed to have a
3 valid license. Complainant refers to and by this reference incorporates the allegations set forth
4 above in paragraph 1 to 24, inclusive, as though set forth fully.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Continuing Education Misrepresentation)**

7 26. Respondent is subject to disciplinary action under section 5100, subdivision (g), in
8 conjunction with California Code of Regulations, title 16, sections 89, subdivision (b), and 87.7,
9 subdivision (a), for unprofessional conduct, in that Respondent willfully misrepresented the
10 completion of continuing education requirements to the CBA. Respondent was required to
11 complete a PC&E course by July 31, 2007, in order to renew his license in active status.
12 Respondent falsely reported to the CBA that he had completed a PC&E course on September 6,
13 2005. Respondent failed to substantiate that he had completed a PC&E course on September 6,
14 2005, or that he had completed any other PC&E course within the two years prior to his renewal
15 date, July 31, 2007. Complainant refers to and by this reference incorporates the allegations set
16 forth above in paragraphs 1 to 24, inclusive, as though set forth fully.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(License Renewal Secured by Misrepresentation of Material Fact)**

19 27. Respondent is subject to disciplinary action under sections 498, and 5100,
20 subdivision (b), in that on Respondent's July 31, 2007 license renewal, he secured his license by
21 fraud and/or deceit by knowingly misrepresenting a material fact. Respondent was required to
22 complete a PC&E course by July 31, 2007, in order to renew his license in active status.
23 Respondent was unable to provide a certificate of completion and falsely reported to the CBA that
24 he had completed a PC&E course on September 6, 2005. Based upon Respondent's assertions
25 that he met all requirements for renewal of his license as a certified public accountant, the CBA
26 renewed Respondent's license, on or about January 31, 2008. Complainant refers to and by this
27 reference incorporates the allegations set forth above in paragraphs 1 to 24, inclusive, as though
28 set forth fully.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Misrepresentation to CBA Inquiry)**

3 28. Respondent is subject to disciplinary action under section 5100, subdivision (g), in
4 conjunction with California Code of Regulations, title 16, section 52, subdivision (d), for
5 unprofessional conduct, in that Respondent knowingly and willingly submitted untrue statements
6 to the CBA. Complainant refers to and by this reference incorporates the allegations set forth
7 above in paragraphs 1 to 24, inclusive, as though set forth fully.

8 **FIFTH CAUSE FOR DISCIPLINE**

9 **(Unregistered Firm Name)**

10 29. Respondent is subject to disciplinary action under section 5100, subdivision (g), in
11 conjunction with section 5060, for unprofessional conduct, in that from at least December 2,
12 2008, and thereafter, Respondent knowingly and willingly practiced under the name of Cassidy &
13 Burton, CPAs, which name was not registered with the CBA. Complainant refers to and by this
14 reference incorporates the allegations set forth above in paragraphs 1 to 24, inclusive, as though
15 set forth fully.

16 **SIXTH CAUSE FOR DISCIPLINE**

17 **(Dishonesty, Fraud, Gross Negligence or Repeated Negligent Acts)**

18 30. Respondent is subject to disciplinary action under section 5100, subdivision (c), for
19 unprofessional conduct, in that from at least September 14, 2007, Respondent engaged in acts
20 constituting dishonesty, fraud, gross negligence, or repeated negligent acts by misrepresenting his
21 status as a CPA to client(s) and misrepresenting to AIOT that its 2008 federal tax return had been
22 filed. Complainant refers to and by this reference incorporates the allegations set forth above in
23 paragraphs 1 to 24, inclusive, as though set forth fully.

24 **SEVENTH CAUSE FOR DISCIPLINE**

25 **(Failure to Respond to CBA Inquiry)**

26 31. Respondent is subject to disciplinary action under section 5100, subdivision (g), in
27 conjunction with California Code of Regulations, title 16, section 52, subdivision (a), for
28 unprofessional conduct, in that Respondent knowingly and willingly failed to respond to inquiries

1 by the CBA, including its letter to Respondent dated May 18, 2010. Complainant refers to and by
2 this reference incorporates the allegations set forth above in paragraphs 1 to 24, inclusive, as
3 though set forth fully.

4 **EIGHTH CAUSE FOR DISCIPLINE**

5 **(False Advertising)**

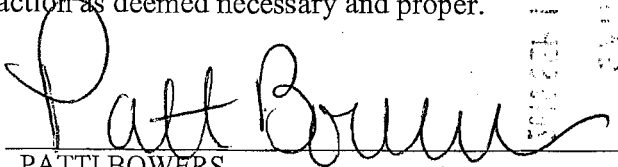
6 32. Respondent is subject to disciplinary action under section 5100, subdivision (g), in
7 conjunction with California Code of Regulations, title 16, section 63, for unprofessional conduct,
8 in that Respondent on and after December 2, 2008, advertised or used other forms of solicitation
9 which were false, fraudulent, misleading, or in violation of section 17500 of the Code by using
10 and advertising the unregistered name of "Cassidy & Burton, CPAs" and holding himself out as a
11 certified public accountant. Complainant refers to and by this reference incorporates the
12 allegations set forth above in paragraphs 1 to 24, inclusive, as though set forth fully.

13 **PRAYER**

14 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
15 and that following the hearing, the CBA issue a decision:

- 16 1. Revoking or suspending or otherwise imposing discipline upon Certified Public
17 Accountant License No. CPA 54698, issued to Respondent;
- 18 2. Ordering Respondent to pay the California Board of Accountancy the reasonable
19 costs of the investigation and enforcement of this case, pursuant to Business and Professions
20 Code section 5107; and
- 21 3. Taking such other and further action as deemed necessary and proper.

22
23 DATED: 9/8/2010


PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

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